

Our File No.: 9109/SHV
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FEDERAL INSURANCE COMPANY and
MARAN, INC.

Plaintiff,

-against-

M/V MSC CHINA her engines, boilers, tackle, etc.
POWER LINK LOGISTICS INC. SAFMARINE
CONTAINER LINES N.V.

Defendants.

08cv1806 (SHS)(HP)

**KEVIN MARTIN DECLARATION
IN SUPPORT OF DEFENDANT POWER
LINK LOGISTICS THE MOTION FOR
SUMMARY JUDGMENT DISMISSING
THE COMPLAINT ON THE BASIS OF
FORUM NON CONVIENES**

Kevin Martin d/b/a Ka lethabo Trading 88cc declares under penalty of perjury under the laws of the United States of America that the following statement is true and correct.

1. I am a citizen and resident of Durban, South Africa.
2. Ka lethabo Trading 88cc is registered as a closed corporation and is owned by my mother. Ka lethabo Trading 88cc does business at the port located in Durban, South Africa.
3. I manage all of the operations of Ka lethabo Trading 88cc. I am the person that runs all of the operations in Durban, the person that deals with the clients directly and the person that checks the containers that enter the port for Ka lethabo Trading 88cc's container terminal orders.
4. I certify that the email, attached to this declaration as Exhibit A, is a true and correct copy of an email that I sent on July 23, 2007.

5. I certify that the document, attached to this declaration as Exhibit B, is a true and correct copy of the CTO (container terminal order) that is referenced in Exhibit A. A CTO is the document that is used when a container comes into the stacks at the port. I certify that the container number and seal number appear in my handwriting on Exhibit B and that I personally verified that the shipper's seal no. MLZA0947843 was on this container when it arrived at the port in Durban, S.A.

6. I certify that upon learning that there was a problem with the shipment, I went onto the SAPO website to confirm the container details. Attached hereto as Exhibit C are true and correct copies of the print-outs from the SAPO website for order reference 750336194 container no. TEXU4748216 on or about June 7 and 8, 2007.

7. I certify that, based upon my personal knowledge, all of my statements contained herein and the exhibits attached hereto are true and accurate with respect to bill of lading no. 750336194 for container no. TEXU4748216 with seal no. MLZA0947843 to be shipped aboard the MSC CHINA N350 on or about June 8, 2007.

Dated: Durban, South Africa
May 6th, 2008

A handwritten signature in black ink, appearing to read 'Kevin Martin', written over a horizontal line.

Kevin Martin aka Kale Thabo

EXHIBIT A

**POWER LINK LOGISTICS'
MOTION FOR SUMMARY
JUDGMENT
DISMISSING THE COMPLAINT
ON THE BASIS OF
*FORUM NON CONVIENENS***

RE : BKG REF : 750336194 : MSC CHINA N350

Page 1 of 2

Marsha Lehmkuhl

From: Kevin Martin [kalethabo@telkomsa.net]
Sent: Monday, July 23, 2007 7:57 AM
To: Marsha Lehmkuhl
Cc: DAVID; COLLEEN
Subject: Re: BKG REF : 750336194 : MSC CHINA N350

GOOD MORNING MARSHA

REFERRING TO OUR CONVERSATION WE HAD ON FRIDAY 20 JULY 2007.

THE SEQUENCE THAT I FOLLOW WITH ALL MY PASSING OF CTO'S IS AS FOLLOWS.
I RECEIVE MY INSTRUCTIONS VIA E-MAIL I THEN PASS THE DOCUMENTS AT THE VARIOUS KIOSKS.
WHEN THE CONTAINER ARRIVES IN DURBAN THE DRIVER PHONES ME AND I THEN MEET HIM AT
THE ENTRANCE TO THE STACKS.
I THEN CHECK THAT THE SEAL IS INTACT AND CORRESPONDS WITH MY INSTRUCTIONS GIVEN TO
ME. IF ALL IS OK WITH THE SEAL I THEN ENTER THE SEAL NO' ON TO THE DOCUMENT. (IF BY ANY
CHANCE THE SEAL NO' DOES NOT CORRESPOND WITH THE NO' ON MY INSTRUCTIONS I THEN
WILL INFORM THE FACTORY. THAT IS ONE REASON WHY I CAN SAY THAT THE SEAL NO' THAT YOU
SAY ARRIVED IN AMERICA WAS NOT ON THE CONTAINER WHEN IT ENTERED THE DURBAN
STACKS).

NOW I WOULD LIKE TO INFORM YOU WHAT HAPPENS AFTER I HAVE ENTERED THE CORRECT SEAL
NO' ONTO THE DOCUMENT.

THE TRUCK PROCEEDS TO ENTER THE STACKS VIA A SECURITY GATE. THE OPERATOR AT THE
GATE ENTERS THE CONTAINER NO' PLUS SEAL NO' PLUS THE TRUCK NO' (ONLY) INTO THE
COMPUTER.
THEN THE TRUCK WILL PROCEED TO A-CHECK WHERE HE WILL THEN ONLY PRODUCE THE CTO
TO THE CLERK. THE CLERK WILL THEN ENTER THE INFO ONTO THE COMPUTER AT A-CHECK,
WHICH WILL CORRESPOND WITH THE INFO ENTERED BY THE OPERATOR AT THE GATE.

IF THE INFO CORRESPONDS WITH EACH OTHER THE CLERK WILL THEN RECEIVE A PRINT OUT
FROM THE COMPUTER INSTRUCTING THE DRIVER TO OFF LOAD AT A GIVEN TOWER TO UPLIFT
THE CONTAINER OFF THE TRUCK.

AS PER THE ATTACHMENT OF THE CTO THAT YOU SENT TO ME VIA E-MAIL. THIS CLEARLY SHOWS
IN MY HAND WRITING THAT THE CONTAINER NO' AND THE SEAL NO' THAT LEFT THE FACTORY
WAS CORRECT TO MY GIVEN INSTRUCTIONS THAT I RECEIVED FROM GLOBAL GARMENTS AND IT
ENTERED THE PORT CORRECTLY.

THE SEAL NO' THAT ARRIVED IN AMERICA 2149427 WAS NOT THE SAME ONE THAT ENTERED THE
STACKS IN DURBAN. THE SEAL NO' THAT ENTERED THE STACKS IN DURBAN WAS ML-ZA 0947843
AND THAT WAS THE SAME AS MY INSTRUCTIONS GIVEN TO ME.

WHAT EVER HAPPENS INSIDE THE PORT HAS NOTHING TO DO WITH ME.

I HAVE GONE INTO THE SAPO WEB SITE AND I CANNOT EXPLAIN ON THERE BEHALF AS TO WHY
THE CONTAINER'S SEAL NO' WAS NOT ENTERED ONTO THE SYSTEM WHEN ENTERING THE PORT. I
HAVE NOTICED THAT SOMETIMES THE OPERATOR AT THE GATE DOES NOT ENTER THE SEAL NO'
ONTO THE COMPUTER AND ENTERS THE CODE TO IMPLY THAT THE SEAL IS OUT OF REACH. I
PERSONALLY THINK THAT THIS HAPPENS CLOSER TO THE CHANGE OF SHIFT (8AM IN THE
MORNING). ON THIS GIVEN DAY THE CONTAINER ENTERED DURBAN STACKS AT 05H02 ON
07/06/2007. YOU WILL SEE THAT THE NEW SEAL WAS ONLY REGISTERED WHEN THEY HAD THE
INSPECTIONS TO LOAD ONTO THE SHIP. ON THE 08/06/2007 AT 09H35.

THE PORT WILL NOT LET A CONTAINER ENTER THE STACKS FOR EXPORT WITHOUT A SEAL NO'
WRITTEN ON THE CTO. AND IF THE SEAL NO' IS INCORRECT TO THE OPERATORS SEAL NO' AT THE
GATE THEY WILL THEN SEND THE CONTAINER OUT OF THE STACKS WITHOUT OFF LOADING THE

7/23/2007

RE : BKG REF : 750336194 : MSC CHINA N350

Page 2 of 2

CONTAINER. THE CONTAINER COULD NOT HAVE ENTERED THE STACKS WITH THE SEAL NO' 2149427 AS THIS NO' WAS NOT WRITTEN ON THE CTO. A COPY OF THE CTO WAS E-MAILED TO ME WITH THE PORT OPERATIONS STAMP AT A-CHECK. (CONTROLLER NO' 58) THIS STATES TO ME THAT THE SEAL THAT ENTERED THE PORT WAS ML-ZA 0947843.

I AWAIT YOUR REPLY IN THIS REGARD.

THANK YOU
KEVIN MARTIN
CELL: 082 879 0898
FAX: 031-4662608
E-MAIL: kalethabo@telkomsa.net

----- Original Message -----

From: Marsha Lehmkuhl
To: Kevin Martin
Sent: Friday, July 20, 2007 10:01 AM
Subject: RE : BKG REF : 750336194 : MSC CHINA N350

<<3889_001.tif>>

Hi Kevin

As per our telecom, herewith attached a copy of the CTO.

Please revert with your explanation on what has happened with this shipment, as you have advised Me that you personally check the seal nos on each of your consignments.

I await your reply.

Thanks

Marsha Lehmkuhl
Sea & Air Export Controller
Z.A.Trans Logistics ("A Division of Barloworld Logistics (PTY) LTD")
Export Department - Durban
Telephone: (+27) 31 3193000
Direct : (+27) 31 3193019
Facsimile: (+27) 31 3193001
E-mail Facsimile : 086 6061150
Email : marsha@zatrans.co.za

Visit our website: www.zatrans.com

This E-mail and its attachments are subject to the disclaimer published at
<http://www.zatrans.com/zat/disclaimer.htm>

7/23/2007

EXHIBIT B

**POWER LINK LOGISTICS'
MOTION FOR SUMMARY
JUDGMENT
DISMISSING THE COMPLAINT
ON THE BASIS OF
*FORUM NON CONVIENENS***

[illegible]

EXHIBIT C

**POWER LINK LOGISTICS'
MOTION FOR SUMMARY
JUDGMENT
DISMISSING THE COMPLAINT
ON THE BASIS OF
*FORUM NON CONVIENENS***

26 Jul 07 14:46 KEVIN MARTIN
Container Handling Details

037-4662608

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Handling identification	26179081	Out of gauge fore	
Handling Type	IN	Out of gauge aft	
Handling subtype		Out of gauge left	
Handling date	07-06-2007	Out of gauge right	
Handling time	05:02	Stowage instruction	
Order type	BKG	Remark	
Order reference	760336194	Container condition	OK
Order sequence no	1	Container material	
Agent	SAP	Container service code	
MOT Type	TR	Transhipper/shifter indicator	
License plate IN	A3808	Terminal	
Voyage		Forwarder	
Container load status	F	Damage code-01	94
Container ISO Code	4310	Damage code-02	
Container Length(Ft)	40.00	Damage code-03	
Container Height(Ft)	8.60	Damage code-04	
Container type	DV	Damage code-05	
Handling phase	EXE	Damage code-06	
Terminal	PNTDB	Damage code-07	
SPOD country		Damage code-08	
SPOD place		Damage code-09	
POD country		Damage code-10	
POD place		Damage code-11	
Expected MOT type		Damage code-12	
Expected MOT		Damage code-13	
Expected voyage		Damage code-14	
Expected SPOD/POL country		Damage code-15	
Expected SPOD/POL place		Damage code-16	
Expected POD country		Bill of lading number	
Expected SPOD/POL place		Goods shipper/receiver	
Operational reefer indicator	N	Goods description	
Registered reefer temperature	0.00	Seal 01 attached (Y/N)	
Plus minus sign		Seal Origin 01	L
Operational reefer indicator		Seal Type 01	
IMDG sticker identification 01		Seal number 01	DI
IMDG sticker identification 02		Seal 02 attached (Y/N)	
IMDG sticker identification 03		Seal Origin 02	
UN label 1		Seal Type 02	
UN label 2		Seal number 02	
UN label 3		Seal 03 attached (Y/N)	
Container gross weight (KG)	13711	Seal Origin 03	
Container net weight (KG)		Seal Type 03	
Container tare weight (KG)		Seal number 03	
Container CSC date		Seal 04 attached (Y/N)	
Container CSC weight (KG)		Seal Type 04	
DOO indicator		Seal Type 04	
Overheight		Seal number 04	

Mas

WENT IN

07/06/2007

05:02

26 Jul 07 14:45 KEVIN MARTIN
Container Handling Details

037-4882808

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Handling Identification	25216333	Out of gauge aft	
Handling Type	SPC	Out of gauge left	
Handling subtype	SLS	Out of gauge right	
Handling date	08-06-2007	Stowage instruction	
Handling time	08:35	Remark	
Order type	SLS	Container condition	OK
Order reference	SSLS070608/PNTDB	Container material	
Order sequence no		Container service code	
Agent	PNTDB	Transhipper/shifter indicator	
MOT Type		Terminal	
Voyage		Forwarder	
Container load status	F	Damage code-01	94
Container ISO Code	4310	Damage code-02	
Container Length(FT)	40.00	Damage code-03	
Container Height(FT)	8.60	Damage code-04	
Container type	DV	Damage code-05	
Handling phase	EXE	Damage code-06	
Terminal	PNTDB	Damage code-07	
SPOD country		Damage code-08	
SPOD place		Damage code-09	
POD country		Damage code-10	
POD place		Damage code-11	
Expected MOT type		Damage code-12	
Expected MOT		Damage code-13	
Expected voyage		Damage code-14	
Expected SPOD/POL country		Damage code-15	
Expected SPOD/POL place		Damage code-16	
Expected POD country		Bill of lading number	
Expected SPOD/POL place		Goods shipper/receiver	
Operational reefer indicator	N	Goods description	
Registered reefer temperature	0.00	Seal 01 attached (Y/N)	
Plus minus sign		Seal Origin 01	L
Operational reefer indicator		Seal Type 01	
IMDG sticker identification 01		Seal number 01	DI
IMDG sticker identification 02		Seal 02 attached (Y/N)	
IMDG sticker identification 03		Seal Origin 02	L
UN label 1		Seal Type 02	SS
UN label 2		Seal number 02	2149427
UN label 3		Seal 03 attached (Y/N)	
Container gross weight (KG)	13711	Seal Origin 03	
Container net weight (KG)		Seal Type 03	
Container tare weight (KG)		Seal number 03	
Container CSC date		Seal 04 attached (Y/N)	
Container CSC weight (KG)		Seal Type 04	
OOG indicator		Seal Type 04	
Overheight		Seal number 04	
Out of gauge fore			

IXI MIDDLE

26 Jul 07 14:46 KEVIN MARTIN.
Container Handling Details

037-4662808

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Handling Identification	25200684	Out of gauge fore	
Handling Type	OUT	Out of gauge aft	
Handling subtype		Out of gauge left	
Handling date	08-06-2007	Out of gauge right	
Handling time	09:35	Stowage instruction	
Order type	LDD	Remark	
Order reference	94283	Container condition	OK
Order sequence no	463	Container material	
Agent	SAF	Container service code	
MOT Type	VS	Transshipper/shifter indicator	
Vessel name OUT	MSCNH	Terminal	
Voyage	N350	Forwarder	
Container load status	F	Damage code-01	94
Container ISO Code	4310	Damage code-02	
Container Length[FT]	40.00	Damage code-03	
Container Height[FT]	8.60	Damage code-04	
Container type	DV	Damage code-05	
Handling phase	EXE	Damage code-06	
Terminal	PNTDB	Damage code-07	
SPOD country	US	Damage code-08	
SPOD place	NYC	Damage code-09	
POD country	US	Damage code-10	
POD place	ENR	Damage code-11	
Expected MOT type		Damage code-12	
Expected MOT		Damage code-13	
Expected voyage		Damage code-14	
Expected SPOD/POL country		Damage code-15	
Expected SPOD/POL place		Damage code-16	
Expected POD country		Bill of lading number	
Expected SPOD/POL place		Goods shipper/receiver	
Operational reefer indicator	N	Goods description	
Registered reefer temperature	0.00	Seal 01 attached (Y/N)	
Plus minus sign		Seal Origin 01	L
Operational reefer indicator		Seal Type 01	
IMDG sticker identification 01		Seal number 01	DI
IMDG sticker identification 02		Seal 02 attached (Y/N)	
IMDG sticker identification 03		Seal Origin 02	L
UN label 1		Seal Type 02	SS
UN label 2		Seal number 02	2149427
UN label 3		Seal 03 attached (Y/N)	
Container gross weight [KG]	13711	Seal Origin 03	
Container net weight [KG]		Seal Type 03	
Container tare weight [KG]		Seal number 03	
Container CSC date		Seal 04 attached (Y/N)	
Container CSC weight [KG]		Seal Type 04	
OOG Indicator		Seal number 04	
Overheight			

LAST CHECK

08-06-2007
09:35